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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 377

JOSEPH S. FAY,

Petitioner,

v.

THE PEOPLE OF THE STATE OF NEW YORK.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK AND FOR STAY OF EXECUTION OF JUDGMENT.

ROBERT J. FITZSIMMONS,
Attorney for Petitioner.

HAROLD R. MEDINA,
Of Counsel.

THE COURT PRESS, N. Y. C.

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK AND FOR STAY OF EXECUTION OF JUDGMENT.

Your petitioner prays that a writ of certiorari be issued to review the final order and judgment of the Court of Appeals of the State of New York (fols. 3553-3561), rendered on July 23, 1946 (upon which a final judgment was entered in the office of the Clerk of the County of New York on the 8th day of August, 1946—fols. 3562-3569), which affirmed a judgment of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, entered on the 20th day of December, 1945 (fols. 3508-3513), affirming a judgment of the trial court, the Supreme Court of the State of New York, New York County, entered on the 5th day of April, 1945 (fols. 2-5, 81-82). Petitioner prays, further, that the execution of said judgment be stayed pending its review by this Court.

Opinions of the State Courts.

The trial court rendered no opinion except the memorandum of Mr. Justice Munson on order deny-

ing defendants' motion for a bill of particulars (fols. 193a-195d), and the memorandum opinion of Mr. Justice Wasservogel granting a certificate of reasonable doubt (fols. 3475-3483).

The Appellate Division of the Supreme Court of the State of New York, First Judicial Department, rendered a *per curiam* opinion (fols. 3517-3531), two of the justices of said Court dissenting in an opinion (fols. 3532-3542).

The Court of Appeals of the State of New York rendered no opinion.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 237 of the Judicial Code, as amended (28 *U. S. C. A.* § 344).

Question Presented.

The question presented is whether the trial and conviction of petitioner for the commission of a crime by a jury from which women and laborers were largely, systematically, and intentionally excluded, denied to petitioner his rights under the Fourteenth Amendment to the Constitution of the United States.

Statutes Involved.

The pertinent statutory provisions are set forth in the Appendix to this petition.

The Manner in Which the Federal Questions Sought to Be Reviewed Were Raised in the State Courts.

The trial court, the Supreme Court of New York County, upon the application of the District Attorney of New York County (fols. 133-138), and over the objection of petitioner's counsel (fols. 163-174), entered an order on February 8, 1945, directing that the indictment of the petitioner be tried before a special jury (fols. 175-182). Special juries are authorized in New York County and in certain other counties by Section 749-AA of the *Judiciary Law* of the State of New York, which is reprinted in the Appendix hereto.

Thereafter, petitioner filed a written challenge to the special jury panel (fols. 182-195) in accordance with Sections 362-363 of the Code of Criminal Procedure of the State of New York.

The challenge to the special jury panel contained the following objections, among others:

* * * *

"3. Section 749-AA of the Judiciary Law is unconstitutional and void both on its face and as applied to the defendants in this prosecution because it is in violation of the United States Constitution, Amendment 14, Section 1, in that it denies to defendants the equal protection of the laws for the reasons hereinafter stated" (fols. 185-186).

"4. Section 749-AA of the Judiciary Law is unconstitutional and void both on its face and as applied to the defendants in this prosecution because it is in violation of the United States Con-

stitution, Amendment 14, Section 1, in that it violates due process of law" (fol. 186).

* * * *

"7. In actual practice the selection of special jurors has been for the purpose of obtaining persons of conservative views, and for the purpose of excluding laborers and persons of humble station in life. These juries are popularly known as 'Blue Ribbon' juries. It is well known that they represent the upper stratum of economic and social life in the County of New York and that they have a greater tendency to convict defendants accused of crime than the jurors chosen from the general list" (fols. 189-190).

* * * *

"10. That the special jury panel selected for the trial of this indictment was chosen in such a manner as to obtain jurors who have certain definite and biased opinions in favor of capital in the relationship between capital and labor, thus making them unfit as special jurors and particularly unfit to sit in judgment in this case, in violation of defendants' rights to a fair and impartial trial" (fols. 191-192).

"11. That the ordering of a special jury panel in this case and the method of its selection destroy the foundations of the jury system as provided for under the Federal and State Constitutions and the laws otherwise applicable thereto, and in violation of defendants' right to obtain an impartial jury" (fols. 192-193).

"12. The special jury panel selected in this case was obtained by excluding from jury service

all persons who might be understanding of the point of view of the laboring man and by weighing the list heavily against defendants because of the preponderance on said special jury list and on the panel for this particular case of executives, bankers, brokers, real estate operators, retired business men, merchants and other persons of like character and by the virtual exclusion from said jury list of trade union representatives, laboring people and women. This constitutes a discrimination in violation of the Constitution of the State of New York and of the United States against these defendants by reason of their class and economic interests" (fols. 193-194).

Testimony was taken on the charges contained in the challenge (fols. 235-414), and at the conclusion thereof the trial court denied the challenge (fol. 415), to which petitioner's counsel excepted (fol. 415).

After petitioner's trial and conviction, he appealed to the Appellate Division of the Supreme Court, First Judicial Department, from the judgment of conviction, and from each and every part thereof, and from each and every intermediate order therein (fols. 7-9), thereby bringing up for review the order denying the challenge to the jury panel (fol. 4).

While the federal questions here sought to be raised were argued before the Appellate Division, that Court said nothing about these questions in its *per curiam* opinion (fols. 3517-3531), nor were they treated in the opinion of the dissenting justices (fols. 3532-3542).

Petitioner then appealed to the Court of Appeals of the State of New York from every part of the judgment of the Appellate Division and appealed specifically, among other matters, from the order

overruling his challenge to the special jury panel (fols. 3499-3504).

The Court of Appeals affirmed the judgment without opinion. However, as stated in the remittitur issued by said Court (fols. 3557-3558), the federal questions here sought to be raised were considered by it.

Statement of Facts.

On May 17, 1943, an indictment (fols. 16-57) was filed against the petitioner, Vice-President of the International Union of Operating Engineers, and one James Bove, Vice-President of the International Hod Carriers, Building and Common Laborers' Union of America, charging them with conspiracy to commit and with actual commission of the crime of extortion by obtaining sums of money from contractors engaged in the construction of the Delaware Water Supply Project in the State of New York through fear induced by threats to these contractors of unlawful injury to their property if the sums of money were not paid. The indictment contained one conspiracy count and six counts charging substantive offenses of extortion against six different contractors. The indictment was filed in the Court of General Sessions for the County of New York, and upon petitioner's motion, the trial of the indictment was transferred to the Supreme Court of the State of New York (fols. 127-132).

Petitioner and James Bove were tried before a court and special jury. They were found guilty of the crime of conspiracy as charged in count one of the indictment, and of the crime of extortion as charged in count seven; the jury found them not guilty on

counts two, three and five and not guilty by direction of the court on count four. The jury was unable to reach a verdict with respect to count six (fols. 3290-3291).

On April 5, 1945, petitioner was sentenced upon the conspiracy count to a term of one year in the City Penitentiary, and the payment of a fine of $500.00; and, on the extortion count, to a term in the State Prison of not less than seven and one-half nor more than fifteen years, the sentences to be served consecutively (fols. 208-210, 3421-3426).

Since the questions raised by this petition relate solely to the composition of the jury panel from which petitioner's jury was selected, petitioner will restrict his statement to the facts pertaining to these issues.

As indicated, petitioner was tried by a special jury, commonly referred to as a "blue ribbon jury." In the State of New York there are separate panels of general jurors and special jurors (fol. 247). Both, however, have their source in the list of persons who are called to come to the office of the Division of Jurors to be examined for general jury duty.

The Division of Jurors for New York County obtains lists of prospective jurors from registration lists, tax lists, census lists, telephone directories, and the like (fol. 375). Notices are sent to persons whose names are thus obtained, requiring them to appear at the offices of the Division of Jurors to be examined for jury duty (fol. 373).

However, while women are equally eligible with men to serve on juries in the State of New York (*Judiciary Law* of the State of New York, § 502), the Division of Jurors never sends a notice to a

woman to appear to be examined for jury duty (fols. 373-374).

The Division of Jurors accepts for jury duty only such women as volunteer to serve (fols. 373-374).

The Division of Jurors makes a concerted effort to secure women volunteers from what the gentleman in charge of the Division described as "civic conscious" organizations, naming specifically the League of Women Voters (fols. 254-255).

When the prospective jurors to whom the notice has been sent arrives at the office of the Division of Jurors, he is given a questionnaire to fill out (fol. 257, Defendant's Exhibit D-1, fols. 3436-3438).

One of the questions on this form reads as follows (Defendant's Exhibit D-1, fol. 3438):

> "What months of the year between October 1 and June 30 would you prefer to serve (Name two or more months)_____"

While this question obviously demands an answer, every person who answers it is for the reason of having answered it excluded from the special jury panel (fols. 282, 343-344, 349).

In this manner about 90% of all persons summoned for jury duty are excluded from special jury service (fol. 282).

After the prospective juror fills out his questionnaire, he takes it to one of the three examining clerks in the Division of Jurors (fol. 261), who accepts or rejects him for special jury duty, according to the "degree of intelligence as revealed by the questionnaire" (fols. 261-262).

The clerk then takes the accepted juror to one of the two Deputy County Clerks assigned to the Divi-

sion of Jurors, and while these officials may ask the juror further questions based on the questions in the questionnaire (fols. 288, 379-380), the examination is a cursory one inasmuch as these officials rely mainly on the opinion of the examining clerk (fol. 310).

In this manner a panel of about 3,000 special jurors was selected (fol. 247), as compared to the approximately 60,000 jurors on the general jury panel (fol. 246).

Of the approximately 3,000 members of the special jury panel, only 25-30 were women (fol. 337, Defendant's Exhibit D-2, fols. 3442-3444).

Evidence was presented at the trial showing that the special jury panel from which petitioner's jury was selected was composed primarily of bankers, manufacturers, executives, stock brokers, and the like, in number wholly out of proportion to their numerical significance in the community as a whole. Defendant's Exhibit D-2 (fols. 3442-3444) gives the occupational classification of the members of the special jury panel in New York County taken from information supplied by the members of the panel, and on file in the County Clerk's office (fols. 401-403, 407).

As stated, petitioner is a representative of a union of laboring men. Of the 89 talesmen examined on the *voir dire* at his trial, only three were members of a labor union. One of these was a member of a company union (fols. 526-527), who was peremptorily challenged by the People (fol. 558). Another was a member of the Apartment House and Superintendent Managers' Union (fol. 652); and he was likewise peremptorily challenged by the People (fol. 671). The other was a gentleman who had retired from the Treasury Department of Union Carbide and Carbon Corporation at the age of 69, had gone to work with Brooks Brothers

six months before the trial, and who on going with Brooks Brothers had become a member of a union, the name of which he did not know, and which he joined, so he testified, because Brooks Brothers had told him that "everybody had to belong to the union" (fols. 1369-1375). This juror was satisfactory to the People but was peremptorily challenged by the defense (fol. 1375).

Reasons for Granting the Writ.

The questions involved in this case are substantial. In *Smith* v. *Texas*, 311 U. S. 128 (1940), this Court stated, at 311 U. S. 130, that "It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community." The Court there held that discrimination against negroes by state officials in the selection of grand juries was, as to one who had been indicted by such a jury, a denial of basic rights protected by the Fourteenth Amendment to the Federal Constitution.

In *Glasser* v. *United States*, 315 U. S. 60 (1942), it appeared that Glasser, who had been convicted of a crime by a federal jury, claimed in an affidavit that there had been excluded from the jury panel all women except those who were members of the Illinois League of Women Voters. This Court held that if this charge could be proved there would be a showing that Glasser's rights under the Fifth and Sixth Amendments to the Federal Constitution had been impaired. This Court there (315 U. S. 86) reaffirmed the principle "that the proper functioning of the jury system, and, indeed, our democracy itself, re-

quires that the jury be a 'body truly representative of the community,' and not the organ of any special group or class." The Court stated, further, that officials "must not allow the desire for competent jurors to lead them into selections which do not comport with the concept of the jury as a cross-section of the community," and that "Tendencies, no matter how slight, toward the selection of jurors by any method other than a process which will insure a trial by a representative group are undermining processes weakening the institution of jury trial, and should be sturdily resisted."

In *Thiel* v. *Southern Pacific Co.*, 90 L. Ed. Advance Opinions 922 (decided May 20, 1946), this Court reversed a civil judgment on the ground that there were excluded from the panel from which the jury was drawn all persons who worked for a daily wage. The Court again stated: "The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. Smith v. Texas, 311 US 128, 130, 85 L ed 84, 86, 61 S Ct 164; Glasser v. United States, 315 US 60, 85, 86 L ed 680, 707, 62 S Ct 457."

Such being the law, it is clear that the present case presents substantial constitutional questions.

I.

The virtual exclusion of women from jury service by deliberately failing to call them for jury duty and accepting only such women as happen to discover that they are eligible and appear to volunteer for duty certainly does not comport with the constitutional

requirement that a jury be "a body truly representative of the community."

In *United States* v. *Roemig,* 52 F. Supp. 857, the Federal District Court for the Northern District of Iowa, in a well-considered opinion, based on the decisions of this Court, quashed the indictment against the defendant, Louis Roemig, returned by a grand jury from which women were excluded although qualified to serve.

II.

While the Division of Jurors of New York County refuses to call women generally for jury duty, or notify women generally of their eligibility for jury duty, it makes a concerted effort to obtain volunteer women jurors from "civic conscious" organizations such as the League of Women Voters. The obvious effect of this discrimination is not only to minimize the representation of women on the jury panel but to assure that those women who do get on the panel are members of "civic conscious" organizations.

As stated in *Glasser* v. *United States,* 315 U. S. 60, 86:

> "The deliberate selection of jurors from the membership of particular private organizations definitely does not conform to the traditional requirements of jury trial. No matter how high principled and imbued with a desire to inculcate public virtue such organizations may be, the dangers inherent in such a method of selection are the more real when the members of those organizations from training or otherwise acquire a

bias in favor of the prosecution. The jury selected from the membership of such an organization is then not only the organ of a special class, but, in addition, it is also openly partisan. If such practices are to be countenanced, the hard won right of trial by jury becomes a thing of doubtful value, lacking one of the essential characteristics that have made it a cherished feature of our institutions."

III.

Defendant's Exhibit D-2 (fols. 3442-3444) demonstrates strikingly that the great majority of the special jury panel from which petitioner's jury was drawn are members of the upper strata of economic and social society. The degree to which the panel is composed of bankers, manufacturers, executives, stock brokers, and the like, is, as stated, obviously wholly out of proportion to their numerical significance in the community as a whole, and the discrimination is so marked that it cannot have been the result of chance or accident (see *Smith* v. *Texas,* 311 U. S. 128, 131).

A jury panel so heavily weighed in favor of the economically and socially privileged and the interests of capital certainly does not comport with the idea of the jury as "a body truly representative of the community."

As stated by this Court in *Thiel* v. *Southern Pacific Co.,* 90 L. Ed. Advance Opinions 922, 924, 925:

"Recognition must be given to the fact that those eligible for jury service are to be found in every

stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury.

* * * *

"Wage earners, including those who are paid by the day, constitute a very substantial portion of the community, a portion that cannot be intentionally and systematically excluded in whole or in part without doing violence to the democratic nature of the jury system. Were we to sanction an exclusion of this nature we would encourage whatever desires those responsible for the selection of jury panels may have to discriminate against persons of low economic and social status. We would breathe life into any latent tendencies to establish the jury as the instrument of the economically and socially privileged. That we refuse to do."

Petitioner is a representative of a union of laboring men. The prejudice to him in trying him before a jury of the economically and socially privileged is manifest.

IV.

Apart from describing special juries, after careful study, as juries "prone to convict," The Judicial Council of the State of New York has stated that the special jury system is "distinctly un-American and not consonant with a trial by one's peers" (Reports

of The Judicial Council: Fourth Annual Report, pp. 46-48; Fifth Annual Report, p. 42; Sixth Annual Report, p. 197).

The evidence in the present case shows distinctly in what aspects the special jury here involved was un-American and unconstitutional. We quote again the admonition of the *Glasser* case (315 U. S. 60, 86):

> "Tendencies, no matter how slight, toward the selection of jurors by any method other than a process which will insure a trial by a representative group are undermining processes weakening the institution of jury trial, and should be sturdily resisted."

It would be a pitiful understatement to claim that the selection of special jurors in New York County shows a "slight" tendency to select jurors by a method which fails to insure a trial by a representative group of the community. The evidence in this case demonstrates conclusively that the selection of special jurors in New York County results in a panel which fails in every respect to provide a body of jurors truly representative of the community. Accordingly, the trial of the petitioner before such a jury violated fundamental constitutional rights and privileges which it is incumbent upon this Court to preserve and enforce.

Conclusion.

For the foregoing reasons it is respectfully prayed that this petition for a writ of certiorari be granted, and that execution of the judgment appealed from be stayed pending its review by this Court.

Respectfully submitted,

ROBERT J. FITZSIMMONS,
Attorney for Petitioner.

HAROLD R. MEDINA,
Of Counsel.

APPENDIX.

Section 749-aa of the *Judiciary Law* of the State of New York

§ 749-aa. Special jurors in certain counties.

1. List of special jurors. The county clerk of each county of the state having a population of one million or more inhabitants, according to the last preceding federal census, shall select from the persons qualified to serve as trial jurors in such county such number of special jurors as the justices of the appellate division of the supreme court, or a majority of them of the department in which such county is situated shall, from time to time direct. The names of the persons so selected liable to serve as special jurors shall be entered in suitable books alphabetically arranged, with their places of business and the residence of each. Such county clerk, from time to time, may cancel such selection and strike the names of such special jurors from such list and select other special jurors in their places. Persons who are selected as aforesaid by such clerk to act as special jurors shall be exempt from all other jury duty from and after the date of their selection, and they shall remain so exempt so long as they continue to be such special jurors.

2. Persons ineligible. No person shall be selected as such special juror who is by law disqualified or who claims and is allowed exemption from service as a trial juror, or who has been convicted of a criminal offense, or found guilty of fraud or other misconduct by the judgment of any civil court or who possesses such conscientious opinions with regard to the death penalty as would preclude his finding a defendant guilty if the crime charged be punishable with death, or who doubts his ability to lay aside

an opinion or impression formed from newspaper reading or otherwise, or to render an impartial verdict upon the evidence, uninfluenced by any such opinion or impression, or whose opinion as to circumstantial evidence is such as would prevent his finding a verdict of guilty upon such evidence, or who avows such a prejudice against any law of the state as would preclude his finding a defendant guilty of a violation of such law, or who avows such a prejudice against any particular defense to a criminal charge as would prevent his giving a fair and impartial trial upon the merits of such defense, or who avows that he cannot in all cases give to a defendant who fails to testify as a witness in his own behalf the full benefit of the statutory provision that such defendant's neglect or refusal to testify as a witness in his own behalf shall not create any presumption against him.

3. Examination as to fitness; subpoena; punishment for disobedience. No person shall be selected as a special juror until he shall have been examined personally by the county clerk, his deputy or secretary as to his qualification and fitness to serve as a special juror. Such county clerk may issue a subpoena requiring any person within such county to attend before him, his deputy or secretary at a time specified for the purpose of testifying concerning the qualification or fitness of himself or any other person to serve as a special juror, and the propriety of the selection of such special juror. A person so subpoenaed must attend and testify accordingly. In case of his failure to attend and testify as required by such subpoena, or a refusal to be sworn, or to answer any legal or pertinent question, he shall be punished therefor by any justice of the supreme court as a contempt of court. All of the provisions of sections four hundred four through four hundred fourteen of the civil practice act, sections twenty-five

and twenty-six of the civil rights law, are made applicable to the enforcement of the provisions of this subsection, except that no fees are required to be paid to any person so subpoenaed. The county clerk, in the record made by him of the jurors selected as such special jurors, shall enter the age of each special juror so selected, his business or vocation, if any, the length of his residence in the state and county and, if naturalized, the date of his naturalization. Such record shall be a public record and shall be open to inspection.

4. Application for special jury. Whenever an issue of fact has arisen in any civil or criminal action triable in a county embraced within the provisions of this section, the district attorney, or the defendant, if in a criminal action, or either party in a civil action may apply for a special jury to try such issue. Such application may be made at any term of the supreme court appointed to be held within the county where such issue is triable, or at any term of any other court of record in which court such issue is to be tried. It must be made upon the indictment, the plea thereto and an affidavit in a criminal action or the pleadings and affidavit in a civil action upon two days' notice to the adverse party or his attorney. Where, upon such application, it appears to the court that by reason of the importance or intricacy of the case, a special jury is required, or that the subject-matter of the indictment or the issue to be tried has been so widely commented upon that the court is satisfied that an ordinary jury cannot without delay and difficulty be obtained to try such issue, or that for any other reason the due, efficient and impartial administration of justice in the particular case would be advanced by the trial of such an issue by a special jury, the court to which the motion is made may

make an order directing that such trial be had by a special jury, and such trial shall be had accordingly. The order must specify the time when the drawing of such special jury shall take place and the number of special jurors to be then drawn, the term of the court and particular day in the term when such special jury must attend. The day so specified for the attendance of the special jury must, except in the case of an order for additional special jurors drawn under sub-section six of this section, be at least five days in addition to any Sunday, holiday or half-holiday, after the day specified for the drawing of the special jury.

5. Drawing; notification of jurors. At the time specified in the order the special jury shall be drawn at the office of the county clerk as provided in section six hundred and two of this chapter. A minute of the drawing must be kept by the county clerk, or his deputy, which must be entitled in the action in which the jury is to serve specifying the term of court and the particular day in the term when the special jurors so drawn must attend; and there must be entered thereon the name of each juror drawn. Such minute must be signed by the judge or justice and by the county clerk, or his deputy, present at the drawing and such minute so signed must be filed in the office of such county clerk. Such county clerk must notify each juror therein named in the manner provided for trial jurors, except that provisions as to intervals of time with regard to the notification of trial jurors shall not apply. Before the day specified for the attendance of the special jurors the county clerk must file with the clerk of the trial court, part or term at which the juror is required to attend, a certified copy of the minute with a return indorsed thereon or annexed thereto specifying the manner in which each

juror was notified and the time and place of the service of such notice. Such return shall be presumptive evidence of the fact of such service. An affidavit of the person by whom such service shall have been made, stating the manner, time and place of such service shall accompany such return.

6. Additional jurors; drawing. If the panel of the special jurors thus drawn shall be exhausted before a jury is completed, or if the trial court shall be of the opinion that additional special jurors will probably be needed to complete the jury, the trial court may, from time to time, direct that such additional special jurors be drawn for the trial as it may deem expedient. The order must specify the number to be drawn, the time of the drawing and the time when such additional jurors shall be required and notified to attend. Such additional drawing shall be made by the same officers authorized to draw the special jurors, either in open court in the presence of the judge or justice presiding at the trial, or at the office of the county clerk as prescribed in such order, and shall be conducted in the same manner as the original drawing and a minute thereof kept and certified as prescribed for the original drawing, and the jurors so drawn shall be summoned in the same manner as those originally drawn.

7. Challenges; trial. The parties to such an action shall have the same number of peremptory challenges and the same challenges for cause to be tried in the same manner as upon a trial with an ordinary jury. The rulings of the trial court, however, in admitting or excluding evidence upon the trial of any challenge for actual bias shall not be the subject of exception. Such rulings and the allowance or disallowance of the challenge shall be final. Upon the

formation of a special jury as hereinbefore provided the issue must be tried by such jury as prescribed by the code of criminal procedure or the civil practice act with respect to a jury trial in a criminal or civil action with an ordinary jury.

8. Revision of list. In each county of the state to which this section applies, the names selected and composing the special jury list heretofore compiled, shall be the special jury list for such county subject to such revision thereof by striking therefrom and adding thereto the names of such jurors as from time to time the county clerk shall deem proper.

9. Appellate division to make rules. The justices of the appellate division of the supreme court of the department embracing the county in which such special jury list shall be constituted shall make such rules and regulations not inconsistent with the provisions of this section as shall be necessary to regulate the making of the application for a special jury under the provisions of this section for the drawing and attendance of such jurors and for the proper and efficient enforcement of the provisions of this section.

10. Violations of section or rules, penalty. Any violation of this section, or of such rules and regulations prescribed by the appellate division of the supreme court shall be deemed a contempt of court under section seven hundred fifty of the judiciary law and such rules and regulations may be enforced as if a violation thereof were such a contempt as provided by section seven hundred fifty-one of the judiciary law.